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FAIRCHILD SEMICONDUCTOR CORPORATION

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ALPHA & OMEGA SEMICONDUCTOR,  
INC., a California corporation; and  
ALPHA & OMEGA SEMICONDUCTOR,  
LTD., a Bermuda corporation,

Plaintiffs and Counterdefendants,

v.

FAIRCHILD SEMICONDUCTOR  
CORP., a Delaware corporation,  
Defendant and Counterclaimant.

AND RELATED COUNTERCLAIMS.

Case No. C 07-2638 JSW (EDL)  
(Consolidated with Case No. C 07-2664 JSW)

**FAIRCHILD SEMICONDUCTOR  
CORPORATION'S NOTICE OF MOTION  
AND MOTION TO CHANGE TIME TO  
CONSOLIDATE THE HEARING DATES ON  
DISCOVERY MOTIONS**

**Civil L.R. 6-3**

Hon. Elizabeth D. Laporte

TO PLAINTIFFS AND COUNTERDEFENDANTS ALPHA & OMEGA  
SEMICONDUCTOR, INC., AND ALPHA & OMEGA SEMICONDUCTOR, LTD.:

PLEASE TAKE NOTICE THAT pursuant to Northern District of California Civil L.R.  
6-1 and 6-3, Defendant and Counterclaimant Fairchild Semiconductor Corporation ("Fairchild")  
hereby moves the Court for an order consolidating the Motion To Strike Fairchild's Patent Local Rule  
3-1 Disclosure filed by Plaintiffs and Counterdefendants Alpha & Omega Semiconductor, Inc., and  
Alpha & Omega Semiconductor, Ltd., (collectively, "AOS") currently set for hearing on November  
27, 2007, ("AOS's Motion to Strike"), with Fairchild's Motion to Strike AOS's Patent Local Rule 3-1  
Disclosure ("Fairchild's Motion to Strike") and with Fairchild's Motion to Compel Responses to  
Interrogatories and Requests for Documents ("Fairchild's Motion to Compel"), filed concurrently  
herewith, and set for hearing on December 11, 2007. This motion is made on the grounds that these  
motions involve overlapping issues, that hearing all the pending motions at the same time would be  
more efficient for the Court and the parties, and that it would ensure the most reasonable and effective  
resolution of the motions. A declaration of Igor Shoiket In Support Of Fairchild's Motion To Change  
Time To Consolidate The Hearing Dates On Discovery Motions ("Shoiket Decl. ") and a Proposed  
Order Changing Time accompany and support this Motion.

In accordance with Civil Local Rule 6-3(a)(2), Igor Shoiket, counsel for Fairchild, contacted  
Andrew Wu, counsel for AOS, on November 5, 2007, and requested a stipulation from AOS to have  
the pending motions consolidated for hearing on December 11, 2007. Mr. Shoiket offered to extend  
the time for AOS to file its reply to Fairchild's opposition to AOS's Motion to Strike, to be based on  
the December 11th hearing date. Alternatively, Mr. Shoiket offered to shorten time to hear Fairchild's  
motions on November 27th. Mr. Wu indicated that AOS would not agree to either proposal. Shoiket  
Decl. ¶ 3.

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. CONSOLIDATING THE PENDING MOTIONS WOULD BE COST-EFFECTIVE AND WOULD SERVE THE INTERESTS OF JUSTICE**

The pending motions currently scheduled for November 27, 2007, and December 11, 2007,  
share a substantial overlap both in terms of subject matter and law, and involve the same, or closely

1 related, facts, and legal principles. All three motions deal with the adequacy of the parties'  
2 Disclosures of Asserted Claims and Preliminary Infringement Contentions ("PICs") under Patent  
3 Local Rule 3-1, so considerations of judicial economy would suggest these motions be heard on the  
4 same day. Fairchild's Motion to Compel challenges AOS's objections to Fairchild's definition of  
5 AOS's products accused of infringement in this case. AOS's objections to the definition of the  
6 accused products, in turn, are based on an argument that Fairchild's PICs fail to provide sufficient  
7 guidance as to what products are at issue in this case. Thus, all three motions seek to resolve disputes  
8 related to sufficiency of the parties' PICs and the definition of the "accused products," as based on the  
9 PICs. Consolidating the motions will promote judicial economy by allowing the Court and parties to  
10 deal with the legal and factual issues common to the motions of both parties at one hearing. Further,  
11 consolidating the motion hearings for these motions would conserve resources by avoiding the need  
12 for counsel and the Court to attend separate hearings on different dates.

13 AOS is not prejudiced by Fairchild's requested enlargement of time to hear AOS's Motion to  
14 Strike two weeks later than AOS's original noticed hearing date of November 27. AOS does not  
15 allege any inadequacy in Fairchild's disclosure of its theories of infringement or supporting evidence,  
16 but only whether the current Fairchild PICs can support an accusation of infringement against AOS's  
17 entire trench power MOSFET product line as opposed to being limited to the AOS devices identified  
18 in the parties' licensing correspondence in 2005 and the products for which claim charts were  
19 submitted in Fairchild's PICs.

20 Determination of the universe of the accused devices is essentially a discovery issue, and  
21 discovery is in initial stages. AOS does not argue that Fairchild's current PICs provide insufficient  
22 notice and disclosure as to how Fairchild applies its asserted claims to AOS's accused products.  
23 Instead, AOS appears to argue that Fairchild must provide separate infringement claim charts for each  
24 of the 342 AOS products accused of infringement. Consequently, a brief two-week continuance of  
25 AOS's motion will not prejudice AOS's ability to develop its claim construction positions with  
26 respect to Fairchild's patents. Fairchild's PICs, which are 291 pages in length, are also detailed  
27 enough to allow AOS to prepare its invalidity contentions under the current case schedule. On the  
28 other hand, AOS's PICs fail to provide a sufficient disclosure of the factual basis for AOS's theories of

1 infringement. This prejudices Fairchild's ability to select claim terms and prepare claim constructions,  
2 as it is unclear how AOS reads the asserted claims of its patents on Fairchild's accused devices. Most  
3 importantly, Fairchild's ability to prepare invalidity contentions is hindered because it is unclear how  
4 broadly or narrowly AOS reads the asserted claims of its patents.

5 While it is important to the orderly progression of this case to address the deficiencies in  
6 AOS's PICs as soon as the Court's schedule permits, there is no prejudice to AOS to delay the hearing  
7 of its motion by only two weeks. Therefore, Fairchild respectfully requests that the Court continue  
8 AOS's Motion to Strike and consolidate it for hearing with Fairchild's Motion to Strike and Motion to  
9 Compel, set for hearing on December 11, 2007. In continuing the hearing of AOS's Motion to Strike,  
10 AOS's reply papers for its motion would be due on November 27, 2007, rather than November 13,  
11 2007. In the alternative, Fairchild proposes that the time to hear Fairchild's Motion to Strike and  
12 Motion to Compel be shortened to coincide with the hearing on AOS's Motion To Strike on  
13 November 27, 2007.

## 14 **II. PRIOR TIME MODIFICATIONS AND EFFECTS ON THE SCHEDULE FOR THE** 15 **CASE**

16 Subsequent to the initial Case Management Conference, the only previous time modification in  
17 the case was the Court's Order Modifying Case Management Schedule dated Oct. 5, 2007 (Docket No.  
18 43). In that Order, the Court specified a date by which the parties could file amended PICs and  
19 extended by a short amount the deadlines related to service of Preliminary Invalidity Contentions and  
20 claim construction. The requested brief time modification will not have any substantial impact on the  
21 current case schedule.

## 22 **III. CONCLUSION**

23 For these reasons, Fairchild respectfully requests the Court enlarge the time for hearing AOS's  
24 Motion to Strike from November 27, 2007, to December 11, 2007, at 9:00 a.m., according to the  
25 schedule proposed above. Alternatively, Fairchild respectfully requests the Court to shorten the time  
26 for hearing Fairchild's Motion to Strike and Motion to Compel from December 11, 2007, to  
27 November 27, 2007, at 9:00 a.m.  
28

1 DATED: November 6, 2007

TOWNSEND AND TOWNSEND AND CREW LLP

2  
3 By: /s/ Igor Shoket

IGOR SHOIKET

4 Attorneys for Defendant and Counterclaimant

5 FAIRCHILD SEMICONDUCTOR CORPORATION

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